

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM P. BARBOUR

Appeal No. 97-0048
Application 08/292,186¹

ON BRIEF

Before KRASS, LEE, and CARMICHAEL, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of
claims 1 through 10, all the claims pending in the application.

The invention pertains to medicine containers and, more
particularly, to such containers wherein the medication therein
may be identified with audible speech through a loudspeaker in a
playback unit.

Representative independent claim 1 is reproduced as follows:

1. Apparatus for identifying medication within a container
with audible speech produced at the demand of a user comprising:

¹ Application for patent filed August 18, 1994.

a. a playback unit at the place where the user stores medication, said playback unit including a loud speaker and circuitry for producing speech sounds identifying contents within a medication container in response to placing the medication container in operative association with the playback unit;

b. said medication container having a memory unit with external electrical contacts adapted for operative engagement with the circuitry of said playback unit; and

c. a programming unit at a pharmacy station having electrical terminals adapted for operative engagement with the terminals on said medication container for transferring at least medication identification and other related information into the memory unit of said container.

The examiner relies on the following references:

Schollmeyer et al. (Schollmeyer)	4,504,153	Mar. 12, 1985
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Hafner	5,181,189	Jan. 19, 1993
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Moore	5,291,191	Mar. 1, 1994
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Sibalis	5,358,483	Oct. 25, 1994 (filed Sep. 23, 1992)
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Damark Product Catalog (Damark)², "Electronics Direct," pages 16, 20-21, and 25, 1994.

Claims 1 through 10 stand rejected under 35 U.S.C. ' 103.

As evidence of obviousness, the examiner cites Schollmeyer, Hafner, Moore and "what was well known in the art as evidenced by the Damark Product Catalog," with regard to claims 1 through 3, 5

² The Damark reference was introduced for the first time in the answer in response to appellant's challenge to the examiner to produce a reference showing that playback systems were "well known in the art," as alleged by the examiner.

and 7 through 10, adding Sildenafil to this combination with regard to claims 4 and 6.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We reverse.

The instant claimed invention requires *identification* of a medication within a container with *audible speech* or *speech sounds*.

In applying Schollmeyer to the instant claims, the examiner notes that Schollmeyer teaches the use of "an audible prompting sound to notify a user of the medication in the container" [answer-page 4]. It is true that Schollmeyer teaches a prompting system, wherein a user is prompted by a signal, audible or visual, as to the time for taking medication. However, Schollmeyer nowhere suggests that the medication in the container is identified or that the signal identifying the medication is one of speech.

It is true that, at column 5, lines 15-19, Schollmeyer describes a "different arrangement" whereby an LCD display

indicates not only that a medication should not be administered, but also indicates which medication, making possible the prompting of the patient to take several different medications at different times.

The language "indicates which medication" might, at first glance, indicate that Schollmeyer is suggesting the identification of the medication in the container. However, it is our view that upon a closer reading of this passage, taken together with the total disclosure of Schollmeyer, it is clear that Schollmeyer is concerned here with multiple medications and that, by the proper prompting signal, the user is prompted as to which medication to take and which medication not to take. Clearly, Schollmeyer is concerned not with identifying the medication within a container, by speech or otherwise, but, rather, is concerned only with prompting a user to take the proper medication at the proper time which time is programmed at a pharmacist-programmable medication prompting station which inputs the information to the prompting device which, in turn, stores the information in an internal memory.

Thus, Schollmeyer fails to suggest the identification, by speech sounds, of the contents of a medication container, as required, in one form or another, by independent claims 1, 2 and 7.

The examiner recognizes that Schollmeyer at least fails to teach a separate sound playback unit as is also required by the independent claims. The examiner's response is to rely on Hafner for the suggestion of separate reading devices 14, 52 and 72 "for the purpose of reading coded information stored on a medicine

package for presentation to a user with a display" [answer-page 5]. The examiner states that Hafner's advantage is in "being usable with more than one container of drugs" [answer-page 5] and then contends that "[h]aving a separate sound playback unit from a sound storage device is well-known in the art of audio electronics" [answer-page 5], citing Damark for this proposition in response to a challenge from appellant.

First, we do not find Hafner to provide for the deficiencies noted supra, i.e., Hafner does not disclose an identification, by speech sound, of the contents of a medicine container. Second, Hafner does not teach or suggest a separate sound playback unit, as required by the claims. The examiner's reliance on Damark for such a teaching is, in our view, misplaced. Merely because separate playback units, such as CD players, stereo systems, boomboxes, etc. were, per se, known, does not, in any way, suggest the use of a separate playback unit in combination with other elements interconnected, in a system for identifying medication with audible speech, as required by the instant claims.

Based on the teachings of Schollmeyer, Hafner and Damark, we find no cogent rationale for combining these references in any meaningful manner to arrive at a system for identifying medication within a container with audible speech wherein a

playback unit is employed for producing the speech sounds for identifying the contents of the medication container.

The examiner also relied on Moore. Moore discloses a medicine dispenser which permits dispensing a plurality of different medicines by having separate compartments for holding individual medicines. As the user gains access to a particular compartment, a sound means for selectively broadcasting an audible description of the medicine dose within that compartment is activated. There is a sound playback means associated with each compartment. Moore discloses, at column 5, lines 5-10, that the sound means

may include typical tape recorder means or the like for allowing an audible description, etc., of each particular medicine dose to be selectively recorded or digitized by speaking into a microphone M and played back through a speaker S.

Thus, Moore clearly suggests employing speech sound for describing a particular medicine dose in a particular compartment within a medicine dispenser.

However, while Moore does suggest the use of audible speech in conjunction with a medicine dispenser, we find no cogent rationale by the examiner, nor do we know of any, as to why or how Moore is to be combined with the other cited references, notably Schollmeyer. It is unclear as to how the loudspeaker of Moore is to be applied in the Schollmeyer system which employs

prompting signals for prompting a user as to the appropriate time for taking a dose of medicine. Even if we assume, arguendo, that it would have been obvious to substitute an audible speech signal for the audio or visual prompting signal of Schollmeyer, in view of Moore, we are still left with the unanswered question as to why it would have been obvious to cause that speech signal to identify the contents of the medicine container rather than merely prompt a user as disclosed by Schollmeyer. And, even if we were to answer this inquiry by contending that Moore's disclosure of an "audible description" of each particular medicine dose would have been suggestive of identifying medication within a container with audible speech, the instant claims require that there be some "interface," or "operative association" between the playback unit and the medication container or that they somehow be placed together in order for the loudspeaker to produce speech sounds which identify the contents of the medicine container. We find no such claimed interconnection of elements disclosed or suggested by any combination of the applied references.

At best, the examiner has apparently found various references disclosing or suggesting various features of the claimed subject matter (e.g., Schollmeyer discloses a programming unit at a pharmacy station, Moore suggests an audible speech description of a particular medicine dose, Damark suggests remote

playback units and Hafner discloses coding information on a medicine package for presentation to a user on a display), but we are unconvinced by any cogent rationale by the examiner as to the obviousness of combining these teachings in such a manner as to arrive at the instant claimed subject matter which requires a specific interconnection of these elements or specifically sequenced steps causing the production of audible speech signals which identify the contents of medication in a container in response to placing the container, with its attached housing which contains a memory, together with the playback unit which houses the loudspeaker. The examiner's conclusion of obviousness could only have resulted from the use of impermissible hindsight.

The reference to Sibalis, applied for the teaching of circular contacts, regarding the limitations of claims 4 and 6, fails to supply the deficiencies noted supra with regard to the other references.

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The examiner's decision rejecting claims 1 through 10 under
35 U.S.C. ' 103 is reversed.

REVERSED

Errol A. Krass)	
Administrative Patent Judge)	
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Jameson Lee)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
James T. Carmichael)	
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